

United States District Court

Northern District of Texas

Jm

Nancy Doherty  
Clerk of Court

1100 Commerce Street  
Dallas, Texas 75242

October 7, 1991

Mr. Abel J. Mattos  
Chief, Court Programs Branch  
Administrative Office  
of the United States Courts  
Suite V1202  
Washington, D.C. 20544

Dear Mr. Mattos:

Please find enclosed a copy of a civil procedure flowchart and accompanying documentation. I am sending this to you by request of my Clerk, Nancy Doherty. These materials were produced by a committee in the Clerk's Office at the request of the Civil Justice Reform Act Advisory Committee.

I collected several flowcharts from around the district and court system, combining the best ideas of each, and then added our local variations to produce the final product.

I will soon begin work on a similar package regarding criminal procedure. Both the civil and criminal flowcharts and documentation will be used in-house during appropriate training sessions.

I hope that the flowchart will be interesting to you and helpful to the AO. If you would like to discuss any part of it, please feel free to call me at FTS-729-0796.

Sincerely,



Allen E. Gold  
Management Analyst

Encl.

cc. Nancy Doherty

***United States District Court***  
**Northern District of Texas**

***Civil Case Flow***

***Nancy Doherty***  
**Clerk of Court**

***Committee Page***

Allen Gold - Chair

Dave Baldwin

Andrea Hinkel

Mike O'Brien

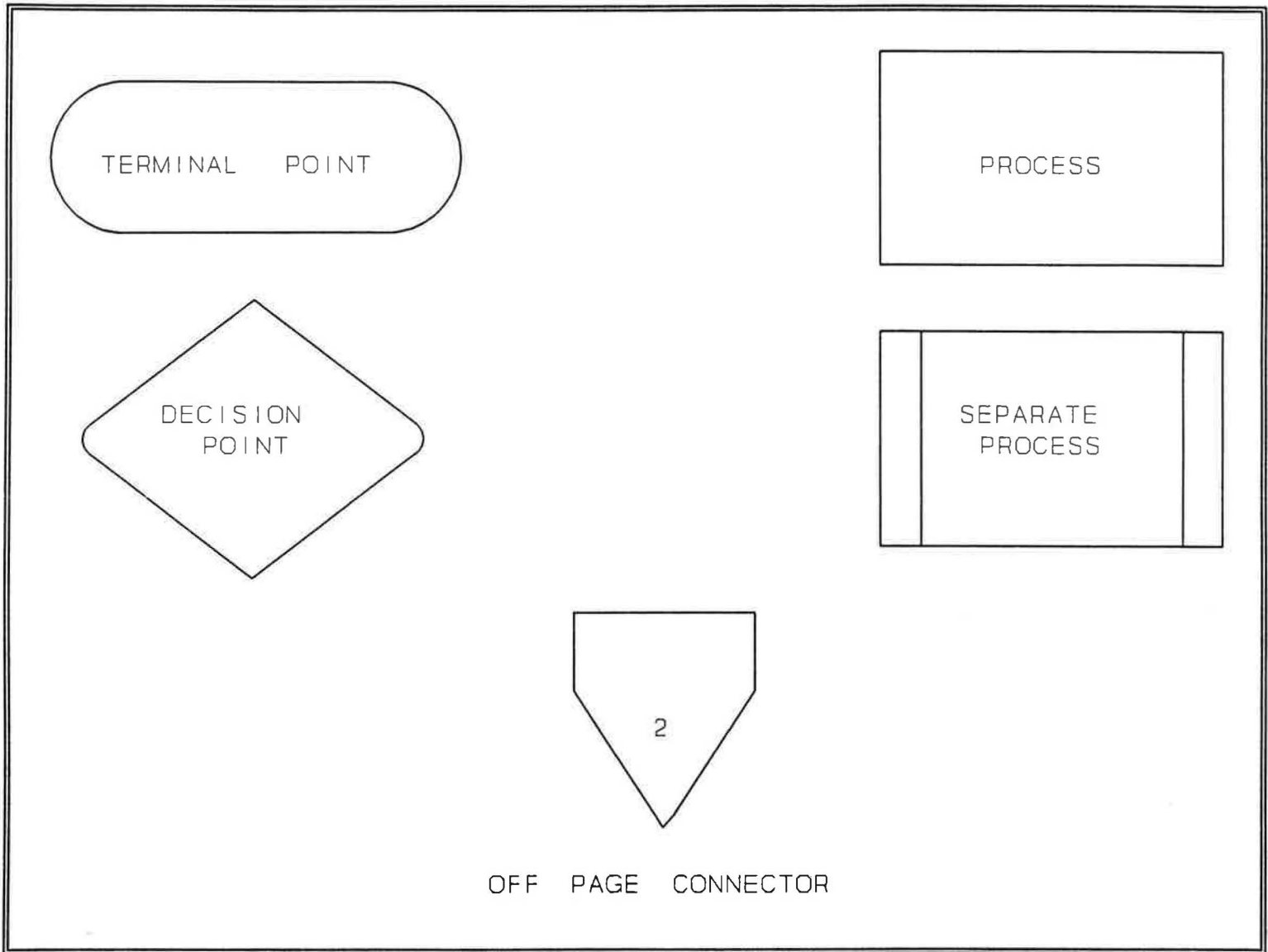
Michael Simon

## ***Table of Contents***

Legend .....	1
Explanation of Flowcharting Symbols .....	2
Civil Case Flowchart .....	3
Explanation of Civil Case Flowchart .....	9
<b>STAGE 1 - PLEADINGS .....</b>	<b>9</b>
Complaint .....	9
Process .....	10
Summons Issuance .....	10
Service .....	11
Return of Service .....	11
Dismissal .....	11
Responsive Pleading to Complaint .....	12
Answer .....	12
Motions .....	13
Default Procedures .....	14
<b>STAGE 2 - PRETRIAL .....</b>	<b>15</b>
Discovery Process .....	16
Discovery Motion .....	16
Interrogatory .....	17
Deposition .....	17
Request for Production .....	17
Pretrial Order .....	18
<b>STAGE 3 - TRIAL .....</b>	<b>19</b>
Trial .....	19
<b>STAGE 4 - POST TRIAL .....</b>	<b>21</b>
Post Trial .....	21
Motions .....	21
Abstract of Judgment .....	21
Writ of Execution .....	22
Appeals .....	23
Uniform Requirements on Motion Practice .....	24

**UNITED STATES DISTRICT COURT - CIVIL CASE FLOW**  
**Northern District of Texas**

# ***Legend***



## *Explanation of Flowcharting Symbols*

*The symbols used in this flowchart conform to the International Organization of Standardization (ISO) International Standard 1028 - "Information Processing -- Flowcharting Symbols," and American National Standard, Flowchart Symbols and Their Usage in Information Processing, ANSI X3.5-1970. The off page connector symbol usage is not included in the above standards.*



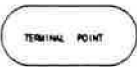
The rectangle (PROCESS) is used to identify any processing function.



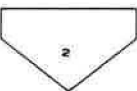
The diamond (DECISION POINT) is used to identify a decision point where at least two alternative paths may be followed.



The rectangle with parallel lines (SEPARATE PROCESS) is used to identify a process which follows steps not relevant to this flowchart and not shown on this chart. Following completion of this process, the process will continue where it left off (on the flowchart).



The oval (TERMINAL POINT) is used to identify a terminal point in a flowchart - start or stop. This is usually a complaint filed or final disposition of the case.

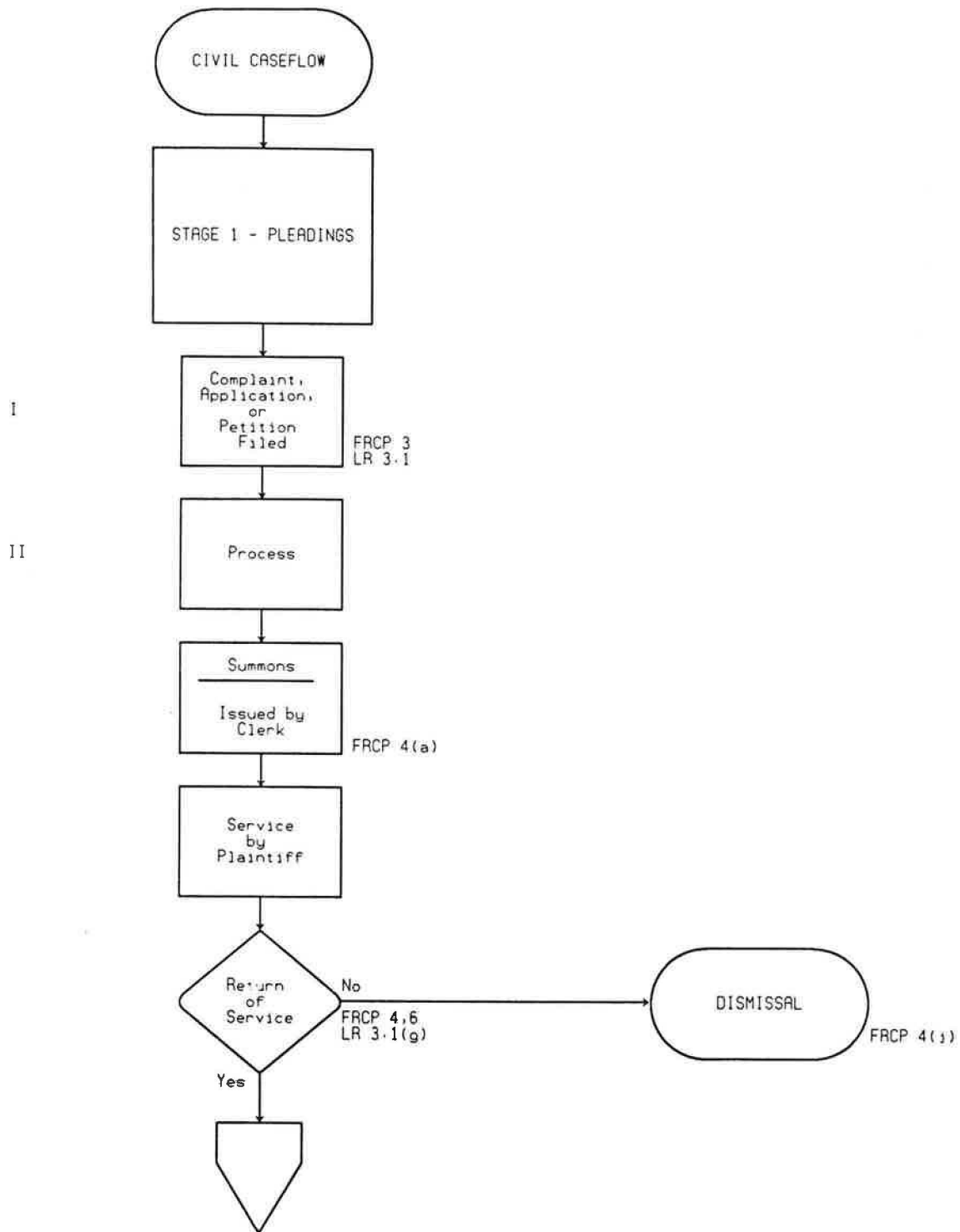


The OFF PAGE CONNECTOR is used to show that the process:

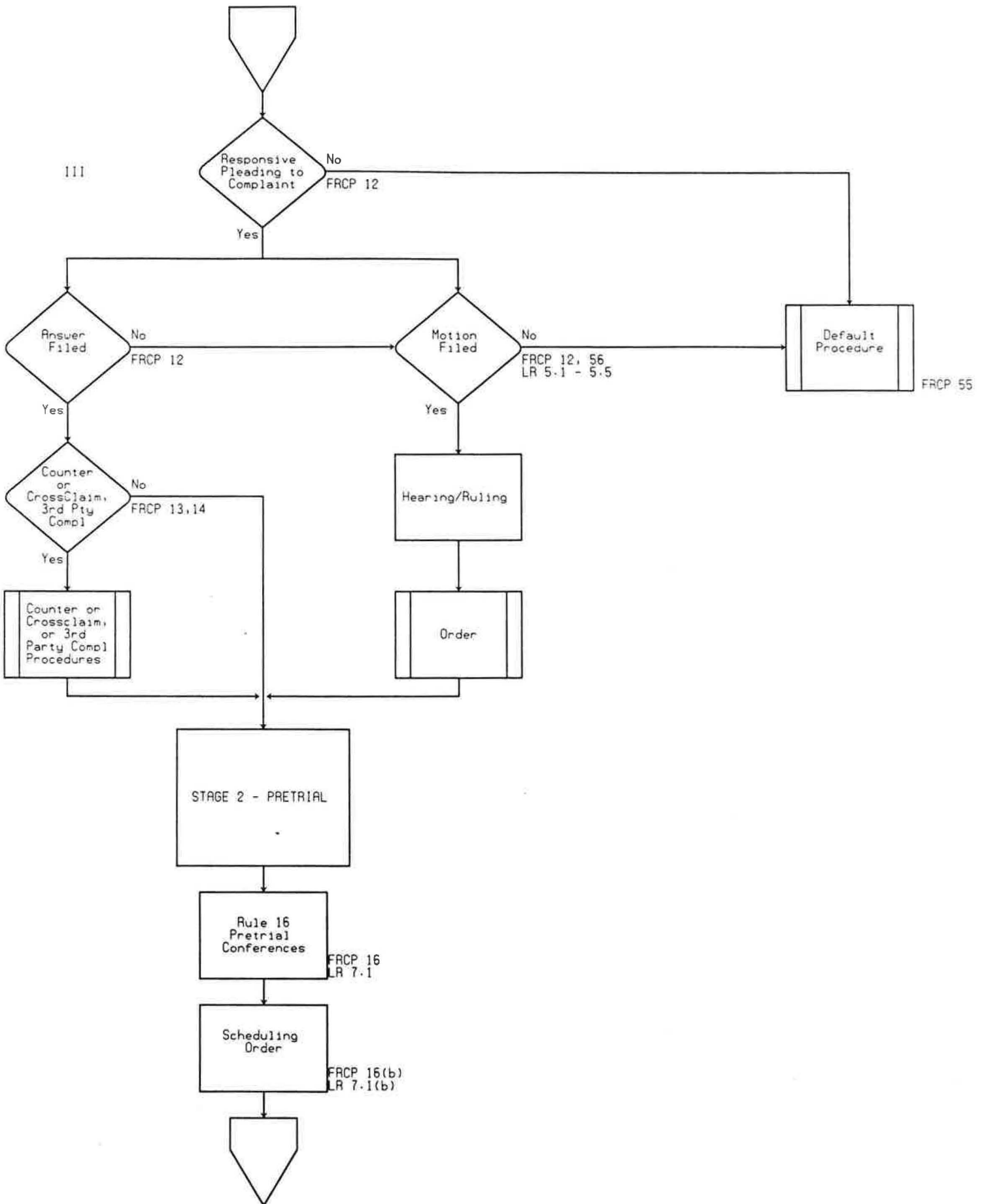
- (when used at the page bottom) continues on the following page, or
- (when used at the page top) is continued from the previous page.

# ***Civil Case Flowchart***

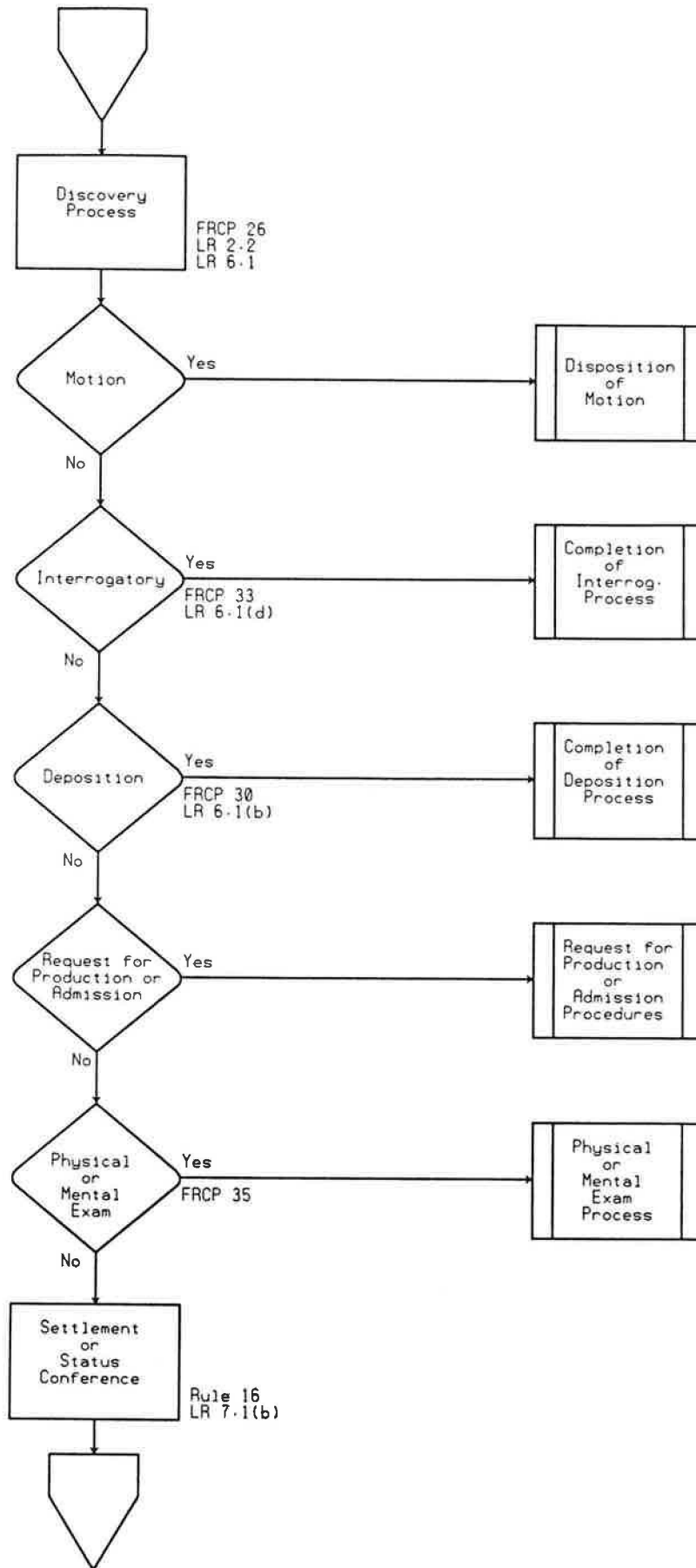
UNITED STATES DISTRICT COURT - CIVIL CASE FLOW  
Northern District of Texas

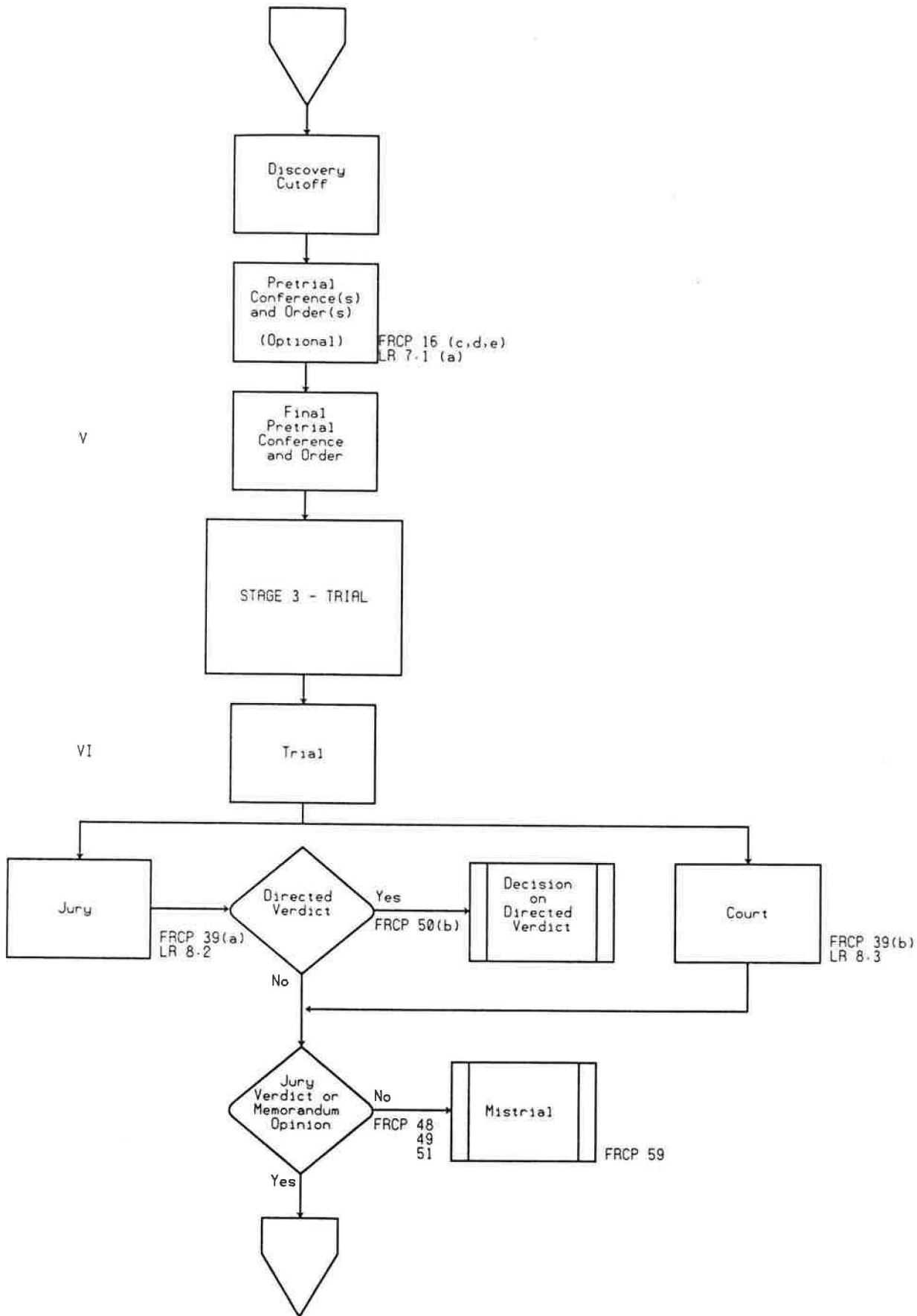




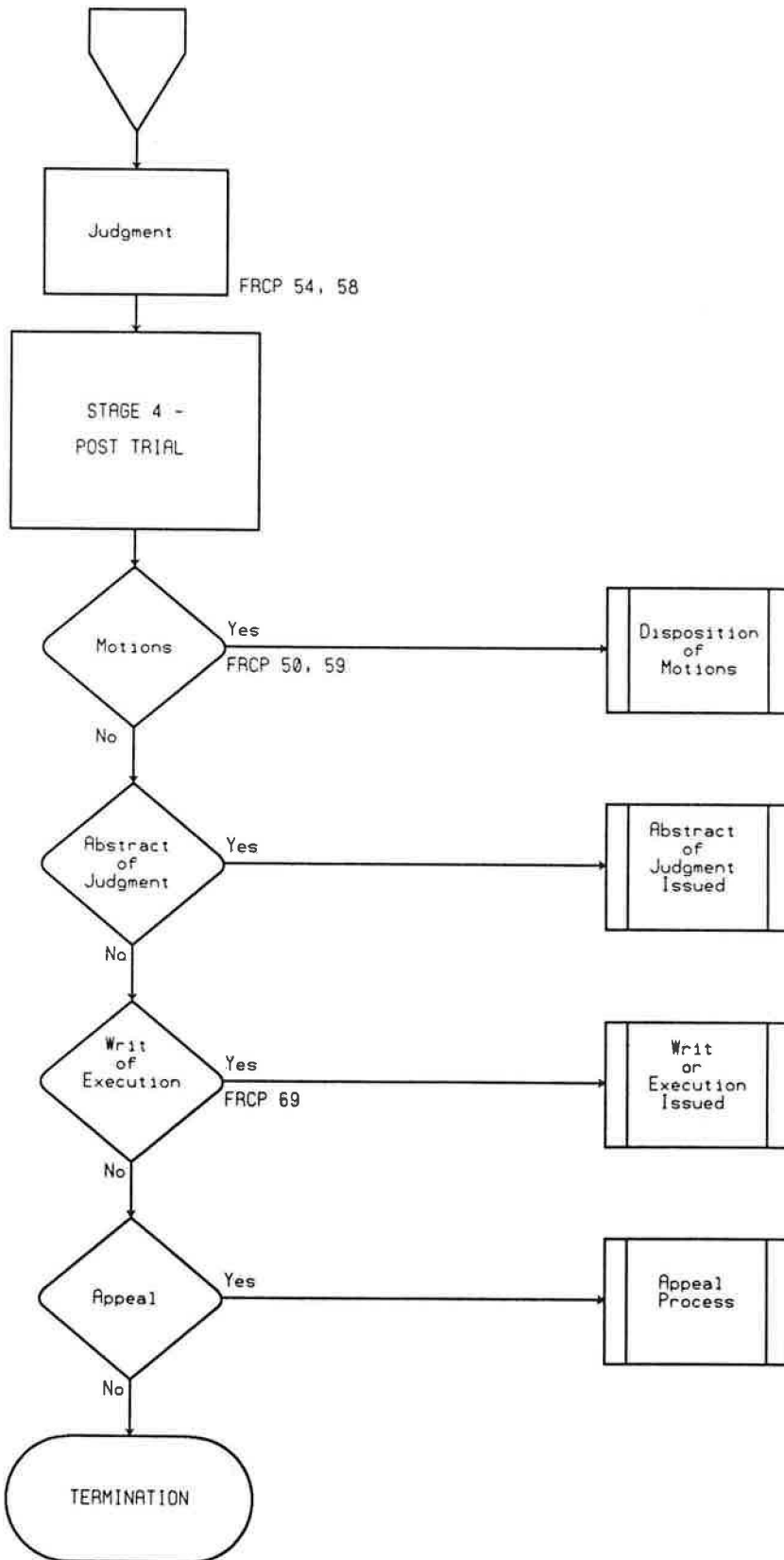


IV





VII



VIII

## *Explanation of Civil Case Flowchart*

### ***STAGE 1 - PLEADINGS***

Courts can't reach out to decide controversies on their own initiative. They must wait for someone to bring the controversy to them. Moreover, courts only decide legal controversies. They are not intended to decide every disagreement that individuals have with one another.

A federal civil case begins when someone --- or more likely, someone's lawyer --- files a paper with the Clerk of the court that states a claim against the person believed to have committed a wrongful act. Judges and lawyers would say that the plaintiff files a complaint against the defendant. The defendant may then file an answer to the complaint. These written statements of the positions of the parties are called pleadings.

- I. Complaint (filed by plaintiff) [See Rule 3, Fed. R. Civ. P.]

In federal district courts the initial case filing is usually a COMPLAINT. However, it can also be titled "Application for ..." or "Petition for ..."

A complaint must fall into one of the following jurisdiction categories to be filed in a federal district court [Rule 8(a), Fed. R. Civ. P.]:

- A. U.S. Government, Plaintiff [filed by a government agency] [28 U.S.C. §1345, 1348].
- B. U.S. Government, Defendant [filed against the United States, its officers or agencies].
- C. Federal Question (U.S. Government Not a Party) [The cause of action involves a violation of the Constitution

of the United States or a federal statute.] [28 U.S.C. §1331].

- D. Diversity [parties are from different states or countries; the amount involved is over \$50,000.00.] The theory is that a trial in a federal court would be more fair (than in a state court) because no one party would have the "home-team advantage" whereas in state court the state citizen *may*. [28 U.S.C. § 1332].

## II. Process

[See Rule 4, Fed. R. Civ. P.]

### A. Summons Issuance

The Clerk, unless the plaintiff requests in writing that service be withheld, must "forthwith issue summons." The plaintiff prepares the summons, inserts the correct number of days (20 days unless the defendant is a government agency in which case they are allowed 60 days to answer; 30 days to answer in cases involving the Freedom of Information Act). The deputy clerk, after checking the summons for accuracy, stamps the Clerk's name, dates, signs his/her name, and seals the summons, returning the papers to the plaintiff for service.

**Exception:** Service for the government and service for plaintiffs who are allowed to file without cost (or are granted *in forma pauperis* status) -- in these situations the United States Marshal will serve the papers.

**B. Service (By Plaintiff)**

When the complaint is filed, the plaintiff may choose to serve the summons and complaint in one of the following methods:

1. Have the papers served by "anyone over 18 who is not a party to the suit."
2. Mail certified or first-class mail to the defendant together with a Notice of Acknowledgement form (which must be signed and returned by the defendant to the plaintiff).
3. Obtain an order from the judge requiring service by the Marshal.

**C. Return of Service [See Rules 4 and 6, Fed. R. Civ. P.]**

Proof of service must be filed with the Clerk.

**D. Dismissal**

If the plaintiff does not serve on the defendant the summons and complaint within 120 days after filing the complaint the action may be dismissed without prejudice unless good cause shown.

III. Responsive Pleading to Complaint [See Rules 6(e) and 12(a), Fed. R. Civ. P.]

Within the designated number of days, usually 20 (remember the government has 60 days), the defendant must file with the Clerk either an ANSWER or a MOTION.

A. Answer

The ANSWER is a written response to the complaint setting forth a defense to all or part of the allegations enumerated in the complaint. When the answer is filed, the "issue is joined."

**NOTE:** Pursuant to FRCP Rules 13 & 14, along with the answer, any or all of the following may be filed:

1. *Counterclaim* (the defendant files a complaint against the plaintiff).
2. *Crossclaim* (the defendant requests equitable relief or contribution from codefendant).
3. *Third-party complaint* (the defendant claims against a party not named in the suit).

If the party wishes to file a counterclaim, crossclaim and/or third-party complaint after the filing of the answer, the Court must first grant permission.



## B. Motions

A MOTION is "an application made to a court or judge for purpose of obtaining a rule or order directing some act to be done in favor of the applicant." (Black's Law Dictionary)

Either party can file assorted motions with the Court throughout the course of the adversarial process. When a motion is filed, briefs, certificates of conference and proposed orders are usually also required. See *Uniform Requirements on Motion Practice* found at the end of this document.

Some of these motions (i.e., for summary judgment, or to dismiss for failure to state a claim upon which relief can be granted) can result in the final disposition of the case. Common motions which may be filed at this time include:

1. Motion to extend [See Rule 12, Fed. R. Civ. P.]  
time to answer.

The judge will review the motion and either grant or deny it. An order will be issued granting or denying the motion.

2. Motion to dismiss. [See Rule 41, Fed. R. Civ. P.]
  - a. For lack of proper jurisdiction (perhaps the case should have been filed in state court).
  - b. Lack of subject matter jurisdiction.
  - c. Improper service.

**NOTE:** A motion to dismiss may be filed at any time.

3. Summary Judgment: [See Rule 56, Fed. R. Civ. P.]

This pretrial motion is filed when a party feels that the pleadings and discovery materials support the complaint (filed by the plaintiff) or that the pleadings support the defense (filed by the defendant).

4. Motions to Amend Complaints or Answers to Complaints

Pursuant to the guidelines of FRCP Rule 15 a party's pleading may be amended once as a matter of course without leave. In this case, a motion would not be necessary and the pleading could be filed without the approval (leave of court) of the judge. Other than the specific situations outlined in Rule 15, a party may amend the party's pleading only by leave of court or by written consent of the adverse party.

C. Default Procedures

The plaintiff may request a judgment against the defendant if, after a properly completed return of service is filed with the Clerk, the defendant does not file an answer or a motion within 20 days.

**Exception:** Default judgment can not be obtained against the government.

## ***STAGE 2 - PRETRIAL***

During the pretrial stage, the lawyers and judge agree before trial, often at pretrial conferences, what issues are in dispute and what issues are not in dispute. Both sides reveal whom they intend to call as witnesses and, generally, what evidence will be introduced at trial.

Through the discovery process, the parties try to learn as much as possible about their opponent's case by exchanging information and material. Discovery may include motions, interrogatories, depositions, requests for production or admission and physical or mental exams (as ordered by the Court).

The goal of the pretrial stage is actually to avoid going to trial, to settle the dispute in a more expedient and less costly way than a full trial.

Pursuant to FRCP 16, the Court may direct the parties to appear in pretrial conferences "for such purposes as

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation, and;
- (5) facilitating the settlement of the case."

In cases which include pretrial conferences, pretrial orders must be entered "to control the subsequent course of the action." Some judges may opt for settlement conferences instead of pretrial conferences.

Also in this stage a scheduling order is entered limiting "the time

- (1) to join other parties and to amend the pleadings;
- (2) to file and hear motions; and

- (3) to complete discovery.

The scheduling order also may include

- (4) the date or dates for conferences before trial, a final pretrial conference, and trial; and
- (5) any other matters appropriate in the circumstances of the case."

This scheduling keeps the course on track by setting deadlines for each segment of the pretrial stage.

#### IV. Discovery Process

[See Rule 26, Fed. R. Civ. P.]

It is now time to gather additional evidence. Either party can make inquiries of unknown facts of a situation before trial to help lead toward a settlement. Discovery materials are *not* filed with the Clerk unless one of the exceptions listed in Miscellaneous Order 29 apply (see LR 6.1(d)).

Discovery materials may include the following:

##### A. Discovery Motion

Among other reasons, if the adverse party has not properly answered interrogatories or delivered the requested documents, the requesting party may file a MOTION TO COMPEL [See Rule 37, Fed. R. Civ. P.] or

If a party feels that certain facts should not be revealed or certain documents should not be turned over, a MOTION FOR PROTECTIVE ORDER may be filed [See Rule 26(c), Fed. R. Civ. P.].

B. Interrogatory [See Rule 33, Fed. R. Civ. P.]

Formal written questions or inquiries to a party which must be answered in words under oath. Like depositions, interrogatories are not filed with the Clerk's office unless required to support other documents.

C. Deposition [See Rule 30, Fed. R. Civ. P.]

Oral testimony (before a court reporter). The testimony is taken down by the court reporter, transcribed, and usually bound in book form. If these depositions are to be used in trial or to support a motion, they may be filed in the Clerk's office. Otherwise, they remain the property of the attorneys.

D. Request for Production of Documents/Admissions [See Rules 34 & 36, Fed. R. Civ. P.]

1. Production

Any party may serve another party a request to produce or allow someone to inspect designated documents (to be filed with the Clerk only if one of the exceptions listed in Miscellaneous Order 29 applies).

2. Admissions

Any party may serve on any other party a written request composed of a series of questions asking the party to respond.

E. Physical or Mental Exam [See Rule 35, Fed. R. Civ. P.]

Generally these exams are ordered when a party's physical or mental condition may or will be at issue. The Court upon motion may order a party to undergo a physical or mental examination by a physician or psychologist.

V. Pretrial Order [See Rule 16, Fed. R. Civ. P.]

A proposed pretrial order should be presented to the Court at least 10 days before the trial setting. [LR 7.1]. The pretrial order governs all subsequent proceedings. Any claims or defense omitted from the pretrial order is waived. This order should include such things as:

- A. A summary of the claims and defenses of each party.
- B. Statement of facts that attorneys agree on.
- C. List of contested issues or fact.
- D. Estimate of the length of trial.

Some judges rely completely on the submitted pretrial orders; others also have pretrial conferences and/or settlement conference in which attorneys meet with the judge.

## ***STAGE 3 - TRIAL***

If the parties can't agree on how to settle a case on their own the Court will decide the dispute through a trial. The purpose of a trial is to find out whether the defendant failed to fulfill a legal duty to the plaintiff. If there is a jury, the judge tells the jury what the law is. The jury determines the facts. In either a jury trial or bench trial, the judge decides what legal standards to apply.

### **VI. Trial**

[See Rule 39, Fed. R. Civ. P.]

When the plaintiff and defendant are unable to settle the case during the course of the pretrial litigation, the judge will set a trial date and the case will go to trial.

Many trials are presented to the Court (called bench trials), although the parties may request a trial before a jury. Civil juries are *not* provided for several case types (for example, Title VII Employment Discrimination and certain bankruptcy matters).

- A. All parties, witnesses, jurors (if jury trial), court reporters, etc., assemble in the courtroom and the case is called. If this is to be a jury trial, the jury is selected/impaneled, sworn in, and testimony begins.
- B. Opening statements are presented first by the plaintiff and then by the defendant.
- C. Plaintiff presents case.
- D. Defendant presents case.
- E. Plaintiff has the opportunity to rebut defense testimony.

- F. Possible motion for a finding for the defendant are presented and argued (non-jury only).
- G. Motions for a directed verdict (take the verdict away from the jury and have it directed by the Court) may be presented and argued (jury trials only).
- I. Each party is permitted to give a closing argument to the Court, if non-jury, or to the jury if a jury trial. The closing arguments summarize what the testimony was to reflect or prove.
- J. If a non-jury trial, the Court will then make a finding or take the matter under advisement.

If a jury trial, the jury will be "charged" or instructed in the applicable law(s) and excused for deliberations.

- K. The jury verdict is announced by the foreman and entered on the record. The jury is dismissed from further consideration.
- L. Formal typewritten judgment is entered based upon either the jury verdict or the Court's finding.



## ***STAGE 4 - POST TRIAL***

This stage of the legal action presents the parties with the opportunity to seek either the enforcement or the reconsideration of the final judgment by the district court. For instance, the losing party may ask the Court to reconsider its decision or to overturn the jury's verdict by filing one of several motions. The prevailing party, on the other hand, can undertake to enforce the judgment by obtaining an abstract of judgment or a writ of execution.

### **VII. Post Trial**

**A. Motions - Each party is permitted to file or serve within a prescribed amount of time the following motions:**

- 1. For a new trial [See Rule 59, Fed. R. Civ. P.]**
- 2. For Judgment Non Obstantio Verdicto (N.O.V.), literally notwithstanding the verdict, essentially asking the Court to reverse the jury verdict [See Rule 50(c)(2), Fed. R. Civ. P.].**
- 3. Motion to add to the verdict because the testimony supports such a request/motion to remit or reduce the amount of a verdict because the testimony did not support the original amount of the verdict.**
- 4. Motion to alter or amend the original judgment to change amounts or dates of interests, costs to include attorney fees, etc., which are relevant to the finality of the judgment.**

**B. Abstract of Judgment**

- 1. This document is prepared on a locally developed form by the party who is seeking satisfaction of judgment.**
- 2. The information is verified by a deputy clerk.**
- 3. If correct, the clerk signs and seals the form.**

4. It is returned to the attorney so that he can file the abstract in county court where the losing party may have property.
5. There is no charge for this.
6. An abstract of judgment is never issued if a supersedeas bond has been filed.

C. Writ of Execution

1. This document is prepared on a locally developed form by the party who is seeking satisfaction of judgment.
2. The information is verified by a deputy clerk.
3. If correct, the clerk signs and seals the form.
4. There is no charge for this.
5. An abstract of judgment is never issued if a supersedeas bond has been filed.

This writ is directed to the U.S. Marshal and served by the U.S. Marshal. A writ of execution is not issued until 10 days have elapsed after the case is closed (judgment entered).

## VIII. Appeals

A party who wishes to challenge either the judgment or an order entered by the Court may file a notice of appeal with the Clerk's Office. It will be forwarded to the Fifth Circuit Court of Appeals (or other designated appellate court) located in New Orleans, La. The designated record on appeal will be transmitted to New Orleans, reviewed by the Court of Appeals and either "AFFIRMED" (agreeing with the lower court's judgment), "REVERSED" (dis-agreeing with the lower court's judgment) or "REVERSED AND REMANDED" (for retrial by this court, or to consider altering, or modifying the original judgment order).

A notice of appeal must be filed within 30 days of the judgment or final order in a civil case and 10 days from the sentence in a criminal case.

**Exception:** If the government is involved in a civil case, both parties have 60 days to appeal.

## Uniform Requirements on Motion Practice

**Legend:**

**B** - Brief required (not required with agreed motion)

**C** - Certificate of Conference and Certificate of Service required\*

**O** - Order required

MOTION (to/for):	B	C	O
AMEND		X	X
CHANGE OF VENUE	X	X	X
COMPEL**	X	X	X
CONSOLIDATION	X	X	X
CONTINUANCE		X	X
DISMISS	X		
EXTEND TIME		X	X
INTERVENE	X	X	X
JUDGMENT NOTWITHSTANDING VERDICT	X		X
JUDGMENT ON PLEADINGS	X		
LEAVE TO FILE	X	X	X
LIMINE	X	X	X
MORE DEFINITE STATEMENT	X	X	X
NEW TRIAL	X		
PRELIMINARY INJUNCTION	X	X	X
PRODUCE DOCUMENTS	X	X	X
PROTECTIVE ORDER	X	X	X
QUASH	X	X	X
RECONSIDER	X	X	X
REINSTATE	X	X	X
REMAND	X	X	X
SANCTIONS	X	X	X
STAY	X	X	X
STRIKE	X	X	X
SUBSTITUTE COUNSEL		X	X
SUMMARY JUDGMENT	X		
WITHDRAW		X	X

**NOTE:** If your motion is not listed above, then a brief, a certificate of conference, and an order will be required. See Local Rule 5.1(a),(c).

\* To ensure prompt filing, each motion should contain separate sections entitled "Certificate of Conference" and "Certificate of Service." See Local Rule 2.1(e).

\*\* Copies of portions of discovery proceedings in dispute must accompany the motion, pursuant to Miscellaneous Order No. 29. See Local Rule 2.2(c).